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rights, unless it plainly appears he had full knowledge of them and a distinct intention to waive them, applies to ratification of a voidable contract, which involves a waiver of objection to that which rendered the contract voidable.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 415.]

4. Contracts (§ 94 (5*))—Requisites of Misrepresentation to Avoid Contract Stated.—In order that a misrepresentation be sufficient to avoid a contract, it must not only have been false, but must have been believed to be true by the other party.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 466.]

5. Sales (§ 421*)—Evidence of Defendant's Knowledge of Fraud at Claimed Ratification of Contract Insufficient to Require Instruction as to Ratification.—In an action for defendant's breach of contract to deliver oats and bran, defended on the ground that plaintiffs had falsely represented to defendant that a government contract for supplying feed had been awarded them, evidence as to defendant's knowledge of the fraud at the time he wrote a letter relied on by plaintiffs as a ratification of the contract, held to amount only to a scintilla of evidence, so that it was not error to fail to instruct as to ratification by defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 602.]

Error to Circuit Court of City of Newport News.

Action by Upton & Walker against R. D. Holloway, doing business under the style of R. D. Holloway & Co., with cross-demand by defendant. Judgment for defendant, and plaintiff brings error. Affirmed.

Lett & Massie, of Newport News, and *Thos. H. Willcox*, of Norfolk, for plaintiff in error.

Jno. N. Sebrell, Jr., of Norfolk, and *S. R. Buxton* and *Nelms, Colonna & McMurren*, all of Newport News, for defendant in error.

COMMONWEALTH et al. v. CARTER et al.

Jan. 22, 1920.

[102 S. E. 58.]

1. Taxation (§ 891½*)—Illegal Assessment of Inheritance Tax May Be Enjoined, There Being No Adequate Legal Remedy.—Acts 1916, c. 64, providing that no suit to restrain assessment or collection of any state or local tax shall be maintained, except where the party has no adequate remedy at law, does not preclude a suit to enjoin the assessment of inheritance taxes under Tax Bill, § 44 (Acts 1916 c.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

484), since Code 1904, §§ 567-573 (Code 1919, § 2385 et seq.), do not provide a remedy at law for illegal assessment of inheritance taxes.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 961, 972.]

2. Appeal and Error (§ 186*)—Objection to Venue Cannot Be First Raised on Appeal After Waiver Below.—Code 1919, § 6049, requires that a suit in which the auditor is a necessary defendant be brought in the city of Richmond, and section 6051 provides for transferring to the circuit court of such city any such action or suit; so it would have been the trial court's duty to change the venue, had proper motion been made, but such question cannot be raised for the first time on appeal, after waiver in the trial court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 548.]

3. Statutes (§ 121 (4)*)—Inheritance Tax Act Not Invalid as Embracing More Than One Object in Title.—Acts 1916, c. 484, providing for assessment of inheritance taxes, is not void, as in violation of Const. § 52, providing that no law shall embrace more than one object, which shall be expressed in its title, its title reciting that it amends General Tax Bill, § 44, entitled "An act to raise revenue for the support of the government," in relation to taxes or inheritances, clearly indicating the changed legislative purpose to impose taxes on direct as well as collateral inheritances.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 751, 752.]

4. Constitutional Law (§ 284 (1)*)—Taxation (§ 859 (1)*)—Inheritance Tax Act Does Not Deny Due Process.—Acts 1916, c. 484, relating to taxes on direct and collateral inheritances, and authorizing, in paragraph F thereof, collection of such taxes in certain contingencies by motion in court, is not in violation of the due process clauses of the federal and state Constitutions; an inheritance tax not being one on property, but a condition precedent to the transfer of property, and particularly since by Code 1904, §§ 567-573, and otherwise, the Legislature has provided a remedy in equity for illegal assessments.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 207.]

5. Constitutional Law (§ 284 (2)*)—Inheritance Tax Act Requiring No Notice of Assessments to Receive of Gift or Inheritance Valid.—There is no inherent right to succeed to property of decedents, and the state has the inherent sovereign right to impose conditions on such succession, and such successor has no property interest in the part of such property which the General Assembly withholds from him, so that an act providing that the clerk of court shall assess such inheritance tax, without requiring any previous notice to those who are to receive a gift or inheritance, is valid, and an assessment thereunder is valid, if based on proper valuation, since no right has been invaded.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Constitutional Law (§ 48*)—Where Statute Susceptible to Valid and Invalid Constructions, the Former Must Prevail.—If under one construction an inheritance tax law may be held not to provide due process and under another to afford such due process, the latter construction should be adopted, for the Legislature will not be presumed to have intent to pass on the invalid law.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 152.]

7. Constitutional Law (§ 284 (2)*)—Inheritance Tax Act Affording Opportunity to Contest Validity before Fixing of Final Liability Affords Due Process.—All that is essential in an inheritance tax law to constitute due process is that the taxpayer be afforded an opportunity to contest its validity, and to show that it is an illegal exaction before it is enforced or his liability therefor is irrevocably fixed, and the character of the tax, whether property or license tax, is immaterial; notice of previous assessment not being required as to either.

8. Taxation (§ 891½*)—Suit to Enforce Inheritance Tax Assessment Cannot Be Entertained, Unless Complainant Is Ready and Willing to Pay Amount Justly Due.—In a proceeding to enjoin the assessment of an inheritance tax, where the precise value of the property is admitted, and the successors to the property can take only by the state's permission what remains after deducting the tax, no court of equity should entertain the bill, unless the complainant is ready and willing to pay the amount of tax which is justly due on a fair valuation of the property.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 961, 972.]

9. Taxation (§ 859 (1)*)—Inheritance Tax Statutes Sufficient Safeguard against Injustice.—Code 1904, § 2647, and section 2671 et seq. (Code 1919, c. 219), require appraisers appointed by the court in which the personal representative qualifies to appraise the property and return an inventory, all of which are recorded in the public records, and if such statutes be substantially followed, the character and value of the property to be transmitted on which inheritance taxes are assessed, will usually be shown, rendering the danger of injustice remote and the statute sufficient.

10. Taxation (§ 891½*)—Suit to Enjoin Inheritance Tax Assessment Properly Entertained.—Where, at the time a bill was filed to enjoin assessment of inheritance taxes, the Legislature had already amended Tax Law, § 44, by Acts 1918, c. 238, providing a remedy by motion, corresponding with that afforded by Code 1904, § 567 et seq., but the 1918 statute had not become effective when the auditor appeared by intervention in a court other than the circuit court of the city of Richmond, without protest or motion to remove, the court properly entertained jurisdiction of the cause, yet, had the institution

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of the suit been postponed until after the statute went into effect, it would have been unnecessary to do so, for the remedy by motion to transfer under the amended statute would have been clearly adequate.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 961, 972.]

11. Taxation (§ 864*)—Inheritance Tax, Not on Entire Estate, but Property Received by Beneficiary, "Property or Interest" and "Estate" Being Used Interchangeably.—Acts 1916, c. 484, relating to assessment of inheritance taxes, places the tax, not on the value of the entire estate, but on the value of the property received by the beneficiary; the word "estate" referring, not to the entire estate, but to the estate or property passing to the several beneficiaries, and the words "property or interest" and "estate" are used interchangeably to convey the same meaning.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Estate. For other cases, see 17 Va.-W. Va. Enc. Dig. 961, 972.]

Sims, J., dissenting.

Appeal from Circuit Court, Clarke County.

Suit by Agnes Mayo Carter, executrix of Thomas Nelson Carter, deceased, and another, against the Commonwealth of Virginia, in which the Auditor of Public Accounts intervened. From the decree therein, defendants appeal. Affirmed.

The Attorney General and *E. Warren Wall*, of Richmond, for appellants.

W. Brydon Tennant and *R. W. Carrington*, both of Richmond, for appellees.

HETH v. COMMONWEALTH.

Jan. 22, 1920.

[102 S. E. 66.]

1. Taxation (§ 861*)—Inheritance Tax Governed by Law in Force at Time of Decedent's Death.—The amount of inheritance tax was governed by Tax Bill, section 44, as amended by Acts 1916, c. 484, in force at time of decedent's death, though the tax was not reported or assessed until such statute was further amended by Acts 1918, c. 238.

2. Taxation (§ 861*)—Remedy for Erroneous Inheritance Tax Assessment Governed by Law in Force When Proceeding Is Instituted.—Proceeding for redress against erroneous inheritance tax assessment was governed by tax bill, section 44, as amended by Acts 1916, c. 484, and Acts 1918, c. 238, subds. 11-13, the law in force at time

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